

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 24, 2008

IN THE MATTER OF: J.C.W., R.J.W

Appeal from the Juvenile Court for Dekalb County
No. 1497-CJ-07 Bratten Hale Cook, II, Judge

No. M2007-02433-COA-R3-PT - Filed September 26, 2008

Father appeals the order of the Juvenile Court for Dekalb County terminating his parental rights, contending that neither the grounds for termination nor the court's conclusion that termination of Father's parental rights is in the best interest of the children are supported by clear and convincing evidence. Having reviewed the record and finding no error in the court's ruling, we affirm same.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., joined. PATRICIA J. COTTRELL, P.J., M.S., not participating.

Sarah J. Cripps, Smithville, Tennessee, for the appellant, Mark Eugene West.

Robert E. Cooper, Jr., Attorney General and Reporter, and Scott Edward Schwieger, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

OPINION

On September 30, 2005, the Department of Children's Services ("DCS") filed a petition to have the two children at issue in this case, J.C.W. (D/O/B 5/14/1990) and R.J.W. (D/O/B 5/4/1998), declared dependent and neglected and placed in DCS' temporary legal custody. DCS became involved when a neighbor made a referral that the children had been abandoned on September 28. The petition alleged, *inter alia*, that the children had been "kicked out of the house" by Father; that they had been physically and verbally abused by him; and that the home in which they were living did not have running water and was otherwise unfit and unsafe for the children. The conditions found in the home visit by the DCS case manager were alleged to be similar to those found in 2004, which had resulted in a previous removal of the children. The court entered a protective custody order granting DCS temporary care and custody of the children, appointing a guardian *ad litem*, and setting a preliminary hearing for October 3.

Following several continuances, the preliminary hearing was held on October 26. The court entered an order leaving custody of the children with DCS; requiring Father to have anger management classes; and requiring DCS to conduct a home study at a trailer that Father had reportedly purchased but which was not ready for occupancy. An adjudicatory hearing was set for December 7 and reset for January 4, 2006.

On January 11, 2006, the court entered an order finding the children to be dependent and neglected and maintaining custody with DCS. The court's dependency and neglect finding was based upon the following:

The Court finds that [Father's] home as shown in collective exhibit #1 is in a deplorable condition and that said home is unfit for the children to live safely. The home was without running water and the children could not bathe or flush the toilet. The evidence showed that the children had to use a neighbor's home to bathe. The court finds that these conditions are inexcusable due to the children previously being placed in the custody of the Department of Children's Services in June of 2004 due to environmental neglect and physical abuse of the children. [Father] has been provided assistance from the Department to provide a suitable home for his children and the Children were returned on a Trial Home Visit with [Father] in November, 2004. The Court further finds that [Father] has struck his child [J.C.W.] in the face with his fist on a number of occasions and finds that this is excessive discipline. The Court finds that his punishment of [R.J.W.] with a belt, when her medicine was misplaced, was excessive discipline of his daughter. The Court finds that [Father's] corporal punishment of [R.J.W.] is inappropriate and harmful due to the evidence that she has a mental disability.

On October 12, 2005, Father entered into permanency plans relative to J.C.W. and R.J.W., which were approved by the court on February 1, 2006. The plans were modified, with Father's agreement, on September 14, 2006, and subsequently ratified by the court. An Annual Permanency Hearing Order was entered on October 25, 2006, *inter alia*, finding Father not in compliance with his responsibilities under the original permanency plans in failing to establish a suitable place to live; the order found that DCS had made reasonable efforts to achieve the permanency plans of reunification, specifically including efforts to the assist Father in making his trailer suitable for the children. The court noted that progress toward reunification was poor "because the father has failed to establish a suitable home" and that "father's failure to establish a suitable home" was contrary to the welfare of the children.

DCS instituted this proceeding on February 2, 2007, seeking to terminate the parental rights of the mothers and father of the children. The mothers of the children were served by publication; they did not answer or otherwise defend and do not appeal the termination of their parental rights. Following a hearing, the Juvenile Court terminated the rights of Father based on failure to support; abandonment by failing to establish a suitable home within the four (4) months immediately preceding the filing of the petition; abandonment by failing to establish a suitable home within four

months following the children being removed from the home; Father's substantial non-compliance with the permanency plans in that he failed to pay support, failed to attend counseling sessions, failed to submit to random drug screens, and failed to obtain adequate housing. The court further found that DCS had made reasonable efforts to assist Father, that the children had been removed from home for more than six months, and that the conditions which led to removal persisted. Finally, the court found by clear and convincing proof that the children had adjusted well in their foster home; had the stability that was lacking in Father's home and, consequently, that termination was in the best interest of the children.

Father appeals the order terminating his rights, contending that neither the grounds found by the trial court nor the court's conclusion that termination of Father's parental rights was in the best interest of the children is supported by clear and convincing evidence.¹ Upon a thorough review of the record, we affirm the judgment of the juvenile court in all respects.

STANDARD OF REVIEW

In accordance with Tenn. R. App. P. 13(d), this Court must review each of the trial court's specific findings of fact *de novo* with a presumption of correctness unless the evidence preponderates otherwise. Then, the court must determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements necessary to terminate parental rights. *See Jones v. Garrett*, 92 S.W.3d 838 (Tenn. 2002); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). Due to the grave consequences that accompany such decisions, courts must apply individualized decision-making to a termination decision. *See In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007), *cert. denied*, 168 L.Ed.2d 729 (2007). However, that right is not absolute and may be terminated in certain circumstances. *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *State Dep't of Children's Services v. C.H.K.* 154 S.W.3d 586, 589 (Tenn. Ct. App. 2004). Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger and of severing forever all legal rights and obligations of the parent and of the child; and the parent shall have no right thereafter to

¹ As aforesaid, the trial court found that Father failed to establish a suitable home over two separate periods: the four month period following removal of the children from the home and the four month period prior to the filing of the petition. The termination petition alleged the four month period after the children were placed in DCS custody as the basis of the claim of abandonment by failure to establish a suitable home. *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii). In this appeal, Father has not challenged the juvenile court's finding of abandonment by failure to provide a suitable home in the four month period immediately prior to the filing of the termination petition. *See* Tenn. Code Ann. § 36-1-102(1)(A)(i). The proof in this case on the issue of abandonment by failure to provide a suitable home was not limited to the two discreet periods. Mindful of our charge to examine all grounds for termination raised in the trial court, *see In Re Giorgianna H.*, 205 S.W.3d 508 at 517 (Tenn. Ct. App. 2006), we have reviewed the entire record to determine whether abandonment pursuant to Tenn. Code Ann. § 36-1-102(1)(A)(i) and (ii) has been established by clear and convincing proof.

have any relationship, legal or otherwise, with the child. Tenn. Code Ann. § 36-1-113(l)(1). The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (quoting *Santosky*, 455 U.S. at 787, (Rehnquist, J., dissenting)).

The statutes on termination of parental rights provide the only authority for a court to terminate a parent’s rights. *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004); *In re Tiffany B.*, 228 S.W.3d 148, 155 (Tenn. Ct. App. 2007). Thus, parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). To support the termination of parental rights, only one ground need be proved, so long as it is proved by clear and convincing evidence. *In the Matter of D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003).

Because the decision to terminate parental rights affects fundamental constitutional rights and carries grave consequences, courts must apply a higher standard of proof when adjudicating termination cases. A court may terminate a person’s parental rights only if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is shown, also by clear and convincing evidence, that termination of the parent’s rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d at 808-09; *In re Valentine*, 79 S.W.3d at 546. “This heightened standard . . . serves to prevent the unwarranted termination or interference with the biological parents’ rights to their children.” *In re M.W.A.*, 980 S.W.2d at 622.

In order to be clear and convincing, evidence must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence. *See In re Valentine*, 79 S.W.3d 539, 546 (citing *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). Such evidence should produce in the fact-finder’s mind a firm belief or conviction as to the truth of the allegations sought to be established. *See In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007); *In re Georgianna H.*, 205 S.W.3d 508, 516 (Tenn. Ct. App. 2006). In contrast to the preponderance of the evidence standard, clear and convincing evidence should demonstrate that the truth of the facts asserted is “highly probable” as opposed to merely “more probable than not.” *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005). The burden is on the party seeking to terminate parental rights to present clear and convincing evidence that grounds exist and that termination would serve the best interests of the children. *See* Tenn. Code Ann. § 36-1-113(c)(1)(2).

ANALYSIS

I. Abandonment

_____Tenn. Code Ann. § 36-1-113(g)(1) designates “abandonment,” as defined in Tenn. Code Ann. § 36-1-102, as a ground for the termination of parental rights. Tenn. Code Ann. § 36-1-102(1)(A) defines “abandonment” in part as follows:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child.

(ii) The child has been removed from the home of the parent(s) or guardian(s) as a result of a petition being filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department . . . that the juvenile court found . . . that the department . . . made reasonable efforts to prevent removal of the child . . . and for a period of four months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date...

Tenn. Code Ann. 36-1-102(1)(A)(i) and (ii).

_____A. Failure to Provide a Suitable Home

_____The juvenile court found by clear and convincing evidence that Father had abandoned the children by failure to provide a suitable home over two periods: from September 2005, when the children were placed in DCS custody, to January 2006; and from October 2, 2006, to February 2, 2007, the four-month period prior to the filing of the termination proceeding. Father does not dispute the court's September 2005 determination that the children were dependent and neglected or the facts found in support of such determination. He contends that, following the children's removal, he moved and used his best efforts to make the new home suitable for them.

At the time of their removal, the children were living with Father in a trailer on Indian Creek in Dekalb County; shortly thereafter Father moved to a trailer located on Bright Hill Road in Smithville. In support of the allegations of the termination petition, DCS filed, pursuant to the authority of Tenn. Code Ann. § 37-1-166(c), the affidavit of Sharon Smith, case manager, which detailed efforts she had made from September 30, 2005, through August 7, 2007, to assist Father in performing his responsibilities under the parenting plans, including efforts made to assist Father in making his trailer suitable for the children. Included in her efforts were several calls made to potential contractors to assist in getting Father's trailer leveled so that electricity could be provided and contacting the electric company to determine the amount of Father's outstanding bill in order to get the electricity turned on. She made numerous visits to the trailer and was able to observe the work being done. Seven months after the initial order entered in the dependency and neglect proceeding she noted that a new room addition to the trailer was not finished and that the house was still cluttered. Four months later she observed that siding had been removed from various parts of

the trailer; that there was some exposed wiring; and that power to the trailer was provided by cables hooked to a car battery.

At the hearing in this case in September 2007, Father acknowledged that the trailer, which had been destroyed by fire a couple of weeks before the hearing, did not have electricity or refrigeration at the time of the fire; he did not know the cause of the fire. He testified to the efforts he made to get the trailer in suitable condition. His testimony was supported to some extent by the testimony of Jeffrey Anselmo, a counselor affiliated with Healing Hearts counseling services, who conducted some counseling with Father between December 2005 and January 2006. Mr. Anselmo testified that Father had begun work on the trailer during the period of Mr. Anselmo's visits, including work to add a room to the front of the trailer, and some tile and brick work. At the time the visits ended, there was still work to be done to complete the room; he also noted that there was no running water or electricity.² Thus, as of January 2006, four months after the removal of the children, Father had not secured a suitable homeplace for them, a situation which continued through the time of the hearing in this case.

In addition to submitting her affidavit, Ms. Smith testified at the hearing as to the efforts made by DCS to assist Father in fulfilling his responsibilities under the permanency plans. She testified that DCS expended substantial efforts and over \$6,500 to accomplish the reunification of Father and the children. With respect to expenditures for the trailer, Ms. Smith testified that she had gotten approval for the payment of Father's outstanding electric bill so that the power could be turned on, as well as preliminary approval for advancing the cost of leveling the trailer so that electricity could be provided to it.³ The expenditure for leveling the trailer was not approved, according to Ms. Smith, because DCS, which had expended substantial funds to assist Father with reference to a prior trailer, wanted assurance that the trailer was in good condition and that Father had the financial ability to keep the electric bill current. Ms. Smith testified that, on several of her visits, she was not able to go into the inside of the trailer and, consequently, could not attest to its condition.⁴

² Mr. Anselmo testified that he only stepped inside the main trailer on one occasion and that his other visits were conducted in the room under construction.

³ Expenditures specifically relating to the trailer were included in a total of \$6,553.99 (not including the amount of the outstanding electric bill) spent by DCS in assisting Father to accomplish the objectives of the permanency plans.

⁴ Ms. Smith testified that on some of her visits:

...I wouldn't go in or he wouldn't let me, there wasn't electricity and couldn't see or that sort of thing. I really couldn't in good conscience say that it was, you know, in good condition enough for us to do that [pay for leveling the trailer] until he finished his remodeling, the siding wasn't up, there was exposed wiring. . . . there was a couple, two or three wood stoves. One time we went, there was car batteries, about six car batteries going to something to provide electricity, I guess for a light fixture. He did have problems, he had a generator at one time and had a little bit of electricity, but I think he told me that blew up.

We have reviewed the record in this case and agree that DCS has shown by clear and convincing evidence that the trailer was not in a condition suitable for the children at any time since their removal in September 2005. While Father complains that DCS failed to advance the funds sufficient for him to get the trailer leveled in order to extend electricity to it, we find that, in the circumstances of this case, the entirety of DCS' efforts in assisting Father and in pursuing reunification were reasonable. As has been noted by this court:

While the Department's reunification efforts need not be 'herculean', the Department must do more than simply provide the parents with a list of services and send them on their way. . . . The Department's employees must use their superior insight and training to assist the parents in addressing and completing the tasks identified in the permanency plan.

. . . the Department's reunification efforts are "reasonable" if the Department has exercised 'reasonable care and diligence . . . to provide services related to meeting the needs of the child and family.' Tenn. Code Ann. § 37-1-166(g)(1) (2005).

The Department does not have the sole obligation to remedy the conditions that required the removal of the children from their parents' custody. When reunification of the family is a goal, the parents share responsibility for addressing these conditions as well. Thus, parents desiring the return of their children must also make reasonable efforts to rehabilitate themselves and to remedy the conditions that required the Department to remove the children from their custody."

In re Giorgianna H., 205 S.W.3d 508 at 519 (citations and footnote omitted).

Following the removal of the children in 2004, DCS had expended funds to assist Father in making the previous trailer (the trailer from which the children were removed the second time) suitable. As found by the juvenile court in its finding of dependency and neglect, Father had allowed that trailer to decline to a "deplorable" condition and, once again, unfit for the children. It was not unreasonable for DCS to require Father to prove the trailer was in good condition and that he could maintain the trailer if DCS was to expend more funds. Moreover, Father's delay of nearly two years in securing a suitable home for his children demonstrates failure to shoulder the responsibilities that the law and the situation at hand placed upon him.

B. Failure to Pay Child Support

Father appeals the finding of the court that he abandoned the children by failing to pay support in the four months immediately preceding the filing of the petition, *see* Tenn. Code Ann. § 36-1-102(1)(A)(I),⁵ contending that the court's finding that he had the ability to pay is not supported by clear and convincing proof.

⁵ The court also found that Father's failure to pay support was in violation of the permanency plans.

At the hearing in this case on September 17, 2007, Father testified that his last regular employment ended around Christmas of 2006, at which time he was earning \$6.00 to \$7.00 per hour; that he had not worked regularly in the several months preceding the hearing due to his bad back; and that, at the time of the hearing, he was receiving social security disability benefits. At the time he was approved for disability payments, the initial monthly payment was \$623 per month, which had been reduced to \$417. He had also received \$1,800 in back benefits, none of which was contributed to the children's support. He testified further than he did odd jobs including hauling and selling junk cars.

It is undisputed that Father had been previously ordered to pay \$29.50 per week per child in support and that he had failed to pay any support from October 3, 2005, the date of entry of the order, through the date of the hearing in this case. The record does not reveal any effort made by Father to seek a reduction or modification of the support in the nearly two years prior to his testimony at the hearing. The record does, however, reflect a comment Father made to Ms. Smith that he was not going to pay support since the children's mothers never paid him any. Father clearly had money and had the ability to earn money; his failure to pay any support is inexcusable and is clear and convincing proof of abandonment.

II. Substantial Noncompliance with Permanency Plans

Tenn. Code Ann. § 36-1-113(g)(2) provides that substantial noncompliance with a permanency plan is a ground for termination of parental rights. In order for noncompliance to justify the termination of parental rights, it must be "substantial." *In re S.H.*, No. M2007-01718-COA-R3-PT, 2008 WL 1901118, at *7 (Tenn. Ct. App. Apr. 30, 2008) (no Tenn. R. App. P.11 application filed). Mere technical noncompliance by itself is not sufficient to justify the termination of parental rights. *Id.* Noncompliance with requirements in a permanency plan that are neither reasonable nor related to remedying the conditions that led to the removal of the child from the parent's custody is not relevant for purposes of Tenn. Code Ann. § 36-1-113(g)(2). *Id.* (citing *In re Valentine*, 79 S.W.3d at 548-49). In addition, the parent's degree of noncompliance with a reasonable and related requirement must be assessed. *Id.*

The court below found by clear and convincing evidence that Father was in substantial noncompliance with the permanency plans by failing to pay support, attend counseling sessions, submit to random drug screens, and obtain adequate housing. The court further found that the conditions which led to the removal of the children persisted and that there was little likelihood that the conditions would be remedied so that the children could be safely returned to Father's custody. Father contends that the findings of substantial noncompliance are not supported by the evidence.⁶

The original permanency plans had reunification with Father as an objective and required Father, *inter alia*, to maintain a safe, stable home with utilities; acquire refrigeration for food; obtain

⁶ We have previously addressed the court's findings relative to housing and support and will not repeat our discussion here.

a lock box for medication; have a mental health and parenting assessment and follow the recommendations; and pay child support. The plans were modified, with Father's agreement, on September 14, 2006, by adding adoption as an alternative goal and, in addition, requiring Father to get treatment for bipolar symptomology; attend anger management and parenting classes; maintain sobriety; have an alcohol and drug assessment and follow recommendations; and submit to random drug screenings. The permanency plans addressed not only the children's physical environs but also identified specific measures Father needed to take in order to improve his ability to appropriately parent his children, one of whom had special needs, and both of whom had been previously removed from the home for similar reasons. Father makes no complaint that the requirements of the plans were not reasonable or related to remedying the conditions that led to the children's removal and we find that the plans were in all respects reasonable.

Viewed in a light most favorable to him, the record shows that Father's efforts to comply with the plans were limited and begrudging and do not reflect that he appreciated the seriousness of the conditions to which the children were exposed or areas of his personal deficiency that the plans were intended to address. Even though one of the outcomes was that Father would maintain sobriety, Father was unsure if he had undergone the required alcohol and drug assessment but, in any event, did not believe he should attend AA or NA classes because "I'm not a druggie or an alchy." He tested positive on a hair follicle test for cocaine and marijuana in September of 2006⁷ and was later convicted of sale of a controlled substance for an offense that occurred in that month. He missed several mental health appointments and counseling sessions. He did not take medication prescribed for the bipolar symptomology because "I don't believe I'm bipolar." Father acknowledged that, at the time the trailer burned, it did not have refrigeration or electricity. The only requirement of the permanency plans that Father met was to participate in anger management and parenting classes; these were conducted by Mr. Anselmo.⁸ The evidence of substantial noncompliance was clear and convincing.

III. Best Interest of the Children

To terminate parental rights, it is not only necessary to prove at least one of the grounds for termination, but the party seeking termination must also prove by clear and convincing evidence that terminating the parent's rights is in the best interest of the child. *See* Tenn. Code Ann. § 36-1-113(c)(2). The best interest of the child is to be determined from the perspective of the child rather than the parent. *See White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004). Tenn. Code Ann. § 36-1-113(i) provides a noncomprehensive list of factors to be considered in determining whether termination of parental rights is in the best interest of the child:

⁷ A urine test taken at the same time showed negative results. The testimony was that the follicle test extended back 90 days while the urine test is "current use only." After these results, Father refused to take follicle tests.

⁸ While Father complains that DCS should have funded more counseling by Mr. Anselmo, there is no indication that Father requested additional counseling.

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5- 101.

Id.

There is ample evidence supporting the court's conclusion that termination was in the best interest of the children. In addition to the failure of Father to secure suitable housing for the children and pay support, nothing in the record shows that Father has made a lasting change or adjustment in his circumstances or conduct, such that it would be in the children's best interest to be in his home. To the contrary, the record shows that he has failed to take advantage of counseling and other assistance that has been made available to him, including help in addressing substance abuse and mental health challenges.

Father acknowledges that R.J.W., the younger child, is mildly retarded and suffers from disruptive behavior disorder and attention deficit hyperactivity disorder. The proof at trial was that J.C.W., her older brother, had undergone extensive counseling to address some of the personal issues arising from his interactions - sometimes combative - with Father. Ms. Smith testified that, since being placed in foster care, both children have improved greatly, have established meaningful relationships with their foster family and need the stability that has been provided to them. Both foster parents testified to the progress each of the children had made since being removed from Father's custody and of the importance of not putting the children, particularly the younger daughter, in a situation where they would regress.

IV. Conclusion

For the reasons set forth above, we affirm the judgment of the juvenile court terminating the parental rights of Father.

The case is remanded to the Juvenile Court for DeKalb County for further proceedings in accordance with the judgment of this Court. Costs are assessed to the Appellee, Tennessee Department of Children's Services, for which execution may issue, if necessary.

RICHARD H. DINKINS, JUDGE